

MS. Perry



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aegis Associates, Inc.--Request for
Reconsideration
File: B-238712.2
Date: May 31, 1990

Augustus C. Romain, Small Business Management Associates, Inc., for the protester.
E.L. Harper, Office of Acquisition and Materiel Management, Department of Veterans Affairs, for the agency.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Question relating to fulfillment of payment and performance bond requirements, which are implemented after contract award, is a matter of contract administration not cognizable by the General Accounting Office under its Bid Protest Regulations.

DECISION

Aegis Associates, Inc., requests reconsideration of our dismissal of its protest against the termination for default of the contract awarded to it under the Small Business Administration's section 8(a) program pursuant to request for proposals (RFP) No. 632-27-89, issued by the Department of Veterans Affairs (VA) for construction work at the VA Medical Center in Northport, New York. We dismissed the protest on February 26, 1990 because it concerned the acceptability of performance and payment bonds in connection with Aegis' existing contract with the VA. Since the dispute arose after the formation of the contract we considered it a matter of contract administration which is not cognizable by our Office under its function as a bid protest forum.

In its request for reconsideration, Aegis essentially argues that since the VA awarded the contract "subject to" acceptance and approval of the performance and payment bonds, and since work on the project has not yet commenced, its protest does not concern a matter of "contract administration" and we should therefore consider Aegis'

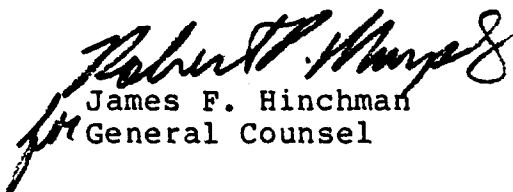
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complaint under our statutory authority to consider bid protests concerning the propriety of contract awards. We affirm our prior dismissal.

Generally, we decline to review the termination of contracts for default or for the convenience of the government because such actions are matters of contract administration which are appropriate for resolution by the contracting agencies and the contract appeals boards under the disputes procedure. See Brown, Boveri-York Kaelte-und Klimatechnik GmbH, B-237202, Feb. 2, 1990, 90-1 CPD ¶ 148. There are limited circumstances, however, where we will review the propriety of the termination, and that is where the termination flows from a defect the contracting agency perceived in the award process. In such cases, we examine the award procedures that underlie the termination action for the limited purpose of determining whether the initial award was improper and, if so, whether the corrective action taken is sufficient to protect the integrity of the competitive procurement system. See e.g., Laclede Chain Mfg. Co., B-221880.2, May 5, 1986, 86-1 CPD ¶ 432. That is not the case here.

There is no indication in the record that the adequacy of any bond was an issue at the time this contract was awarded to Aegis.^{1/} Rather, the adequacy of the individual sureties was only raised 3 months after the contract was awarded. Aegis' contract was terminated for default, therefore, not because of a defect in the award process, but rather, because the VA concluded that Aegis failed as a contractor to fulfill its post-award obligation of providing acceptable bonds. Whether the contract was properly terminated for default for this reason is a matter of contract administration to be resolved under the disputes procedure in another forum. Norfolk Shipbuilding & Drydock Corp., B-231878, July 25, 1988, 88-2 CPD ¶ 83.

Accordingly, the dismissal is affirmed.


James F. Hinchman
for General Counsel

^{1/} It does not appear that Aegis was required to submit a bid bond. Had it done so using the same individual sureties as on its performance and payment bonds, it is likely that their acceptability would have been resolved prior to award.